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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 NATIONAL LAWYERS' GUILD SAN
14 FRANCISCO CHAPTER, et al.,

No. C 08-5137 CRB

15 Plaintiffs,

**JOINT STATUS REPORT
AND STIPULATION TO STAY
PROCEEDINGS; AND ~~PROPOSED~~
ORDER**

16 v.

17 U.S. DEPARTMENT OF HOMELAND
18 SECURITY, et al.,

19 Defendants.
_____ /

20 WHEREAS, in an effort to narrow the issues before the Court,

21 1. On February 13, April 24, and June 24, 2009, the parties informed the Court that
22 Defendants had agreed to reconsider the scope of their searches, reconsider the bases for their
23 withholding of records previously produced, and/or perform secondary searches in response to
24 Plaintiffs' February 2008 FOIA request (and, in the case of EOIR, in response to Plaintiffs' June
25 2008 FOIA request); and

26 2. On April 27, 2009, the Court approved the parties' stipulation to stay proceedings
27 for a period of 60 days to allow the above-mentioned secondary searches, and the processing of
28

1 potentially responsive records, to continue. On June 25, 2009, the Court approved the parties'
2 stipulation (a) to further stay proceedings through and including July 24, 2009; and (b) to submit a
3 joint report advising the Court on the status of the secondary searches and processing, and/or a
4 stipulation proposing a schedule to govern further proceedings, no later than July 24, 2009; and

5 3. Four Defendants — DHS, DHS-OIG, CIS, and CBP — have completed the
6 processing of potentially responsive records, if any, identified from their secondary searches:

- 7 a. Defendant DHS performed a secondary search, and notified Plaintiffs that
8 that search located no responsive records on March 19, 2009;
- 9 b. Defendant DHS-OIG performed a secondary search, and produced
10 responsive, nonexempt records identified therefrom on March 19, 2009;
- 11 c. Defendant CIS performed a secondary search, and produced responsive,
12 nonexempt records identified therefrom on April 24, 2009;
- 13 d. Defendant CBP performed a secondary search, and produced responsive,
14 nonexempt records identified therefrom on June 24, 2009; and

15 4. The parties have conferred to discuss ways to move toward resolution of Plaintiffs'
16 claims against Defendants DHS, DHS-OIG, CIS, and CBP. In an attempt to further narrow the
17 issues before the Court, and perhaps to resolve Plaintiffs' claims against these Defendants without
18 the Court's intervention, the parties have agreed that:

- 19 a. By September 4, 2009, Defendants DHS, DHS-OIG, CIS, and CBP will
20 provide Plaintiffs with a letter that describes the scope of their respective
21 searches for responsive records;
- 22 b. By September 25, 2009, Plaintiffs will respond with a letter that, with respect
23 to each of these Defendants, either (i) stipulates that Plaintiffs do not contest
24 the adequacy of the search; or (ii) states that Plaintiffs believe that the search
25 was inadequate, and identifies any objection(s) with specificity; and
- 26 c. By October 16, 2009, the parties will confer in an effort to determine how to
27 proceed with respect to Plaintiffs' claims challenging the adequacy of these
28 Defendants' respective searches; and

1 5. With respect to Defendants DHS-OIG and CBP, which have withheld certain records
2 as exempt from disclosure, the parties have further agreed that:

- 3 a. By August 7, 2009, Plaintiffs will provide Defendants with a letter that both
4 (i) identifies any record that Plaintiffs contend that Defendants DHS-OIG
5 or CBP improperly withheld (in whole or in part) under the FOIA and for
6 which Plaintiffs request a Vaughn index; and (ii) stipulates that Plaintiffs do
7 not contest the propriety of the withholdings in any other record that DHS-
8 OIG or CBP has produced. If there are multiple withholdings in any record
9 for which Plaintiffs request a Vaughn index, Plaintiffs' letter will identify
10 which withholdings they contest and which they do not. Plaintiffs expect to
11 challenge the withholdings in 8 documents that DHS-OIG has produced and
12 12 documents that CBP has produced, and the parties agree that, if those
13 numbers change materially, this portion of their agreement (i.e., Paragraph 5)
14 is void;
- 15 b. By September 4, 2009, Defendants DHS-OIG and CBP will provide Plaintiffs
16 with a preliminary, partial Vaughn index explaining the bases for the
17 withholdings that Plaintiffs contest;
- 18 c. By September 25, 2009, Plaintiffs will respond with a letter that, with respect
19 to each of the withholdings explained in the preliminary, partial Vaughn
20 index, either (i) stipulates that Plaintiffs do not contest the propriety of the
21 withholding; or (ii) states that Plaintiffs believe that the withholding was
22 improper, and identifies their objection(s) with specificity; and
- 23 d. By October 16, 2009, the parties will confer to determine how to proceed
24 with Plaintiffs' claims challenging the propriety of these Defendants'
25 respective withholdings; and

26 6. The two remaining Defendants — EOIR and ICE — have not yet completed the
27 processing of potentially responsive records identified from their secondary searches.
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1 a. Defendant EOIR has performed a secondary search that has located
2 approximately 2,700 pages of potentially responsive records. Of those, EOIR
3 produced 343 pages of responsive, nonexempt records on May 24, 2009; 754
4 pages on June 23, 2009; and 802 pages on July 23, 2009. Approximately 800
5 pages of potentially responsive records remain to be processed. EOIR
6 expects that processing and production of the remaining records will be
7 completed by August 24, 2009. The parties have agreed to confer by October
8 16, 2009, to discuss ways to move toward resolution of Plaintiffs' claims
9 against EOIR; and

10 b. Defendant ICE has performed a secondary search that has located
11 approximately 24,000 pages of potentially responsive records. Of those, ICE
12 produced 321 pages of responsive, nonexempt records on June 2, 2009; 314
13 pages on June 23, 2009; and 1,034 pages on July 23, 2009. Approximately
14 22,330 pages of potentially responsive records remain to be processed. In
15 view of the large volume of potentially responsive records located by ICE's
16 secondary search, which would require considerable agency resources to
17 process, the parties have conferred to establish a reasonable processing and
18 production schedule. The parties have agreed that, given the resource
19 constraints on ICE's FOIA office, a processing rate of approximately 1,000
20 pages of potentially responsive records per month is reasonable, and that ICE
21 will continue to make interim productions of responsive, nonexempt records
22 on a monthly basis; and

23 WHEREAS it would minimize litigation costs and conserve judicial resources to stay
24 further proceedings in this case to permit the above-mentioned negotiations and processing to
25 continue, and to permit the parties to confer further as described above;

1 IT IS HEREBY AGREED AND STIPULATED by and between the parties, through
2 undersigned counsel, subject to the approval of the Court, that:

- 3 1. Further proceedings in this case are stayed for a period of approximately 3 months
4 through and including October 30, 2009; and
- 5 2. No later than October 30, 2009, the parties shall submit a joint report advising the
6 Court on the status of the above-mentioned negotiations and processing and/or a
7 stipulation proposing a schedule to govern further proceedings.

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1 Dated: July 24, 2009

2 Respectfully submitted,

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Attorneys for Plaintiffs

19 **SIGNATURE ATTESTATION**

20 In accordance with General Order 45(X), I hereby attest that I have obtained Lisa A. Davis's
21 concurrence in the filing of this document.

/s/ Eric B. Beckenhauer
ERIC B. BECKENHAUER

24 **~~PROPOSED~~ ORDER**

25 Pursuant to stipulation, **IT IS SO ORDERED.**

26
27 Dated: **JUL 30 2009**


CHARLES R. BREYER
United States District Judge